

Notice of Allowability

Application No.

10/786,662

Applicant(s)

MAYNARD ET AL.

Examiner

Matthew J Kremer

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 12/10/2004.
2. ☒ The allowed claim(s) is/are 1-5,7-18,20-26 and 28.
3. ☒ The drawings filed on 25 February 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with V. Gerald Grafe (Reg. No. 42,599) on 5/3/2005.

The application has been amended as follows:

In claim 3, line 2, "the" before "range" was changed to --a--.

In claim 5, line 3, --and-- was inserted before "ATR".

In claim 11, line 3, --and-- was inserted after "method;".

In claim 12, line 4, --and-- was inserted after "change;".

Claim 14 was rewritten as follows:

14. A method of determining pH of a sample, comprising:

a) Determining an infrared spectrum of the sample;

b) Verifying that the spectrum is spectrally consistent with ~~the calibration model~~ a model relating an infrared spectrum and associated hemoglobin concentration to pH;

c) Determining the concentration of hemoglobin, hematocrit, or equivalent of the sample;

d) Determining the pH of the sample from the infrared spectrum, the determined hemoglobin, hematocrit, or equivalent concentration, and the model ~~a model relating an infrared spectrum and associated hemoglobin concentration to pH.~~

In claim 18, line 3, --and-- was inserted before "ATR".

Claim 19 was cancelled.

Claim 20 was written as follows:

20) A method of determining pH of a sample, comprising:

a) Determining an infrared spectrum of the sample;

b) Verifying that the spectrum is spectrally consistent with ~~the calibration model a~~
model relating an infrared spectrum and associated hemoglobin concentration to pH;

c) Determining the concentration of hemoglobin, hematocrit, or equivalent of the sample;

d) Determining the pH of the sample from the infrared spectrum, the determined hemoglobin, hematocrit, or equivalent concentration, and the model ~~a model relating an infrared spectrum and associated hemoglobin concentration to pH;~~

wherein determining an infrared spectrum comprises measuring the sample absorbance of infrared radiation in the spectral frequency range from 4000-11000 cm⁻¹.

In claim 24, line 3, --and-- was inserted after "method;".

In claim 25, line 4, --and-- was inserted after "change;".

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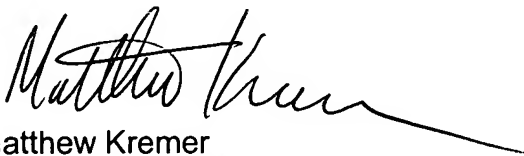
In claim 28, line 6, "comprising a model" was deleted.

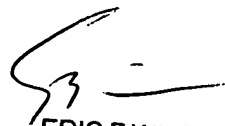
In claim 28, line 11, "on of" was changed to --one of--.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J Kremer whose telephone number is 571-272-4727. The examiner can normally be reached on Mon. through Fri. between 8:30 a.m. - 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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ERIC F. WINAKUR
PRIMARY EXAMINER